

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
CITY OF POMONA, CALIFORNIA
Application and Request for Waiver to Obtain a
License for Frequencies Allocated for Use by Part 22
Licensees
File No. A034936

ORDER

Adopted: January 31, 2000

Released: February 1, 2000

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Before us is an application¹ and request by the City of Pomona, California (Pomona)² for a waiver, pursuant to Section 337 of the Communications Act of 1934 (Act),³ of applicable provisions of Parts 22 and 90 of the Commission's Rules⁴ to permit it to use Part 22 UHF frequencies for public safety services. Upon consideration of the arguments and record presented by Pomona, we find that it has properly invoked the provisions of Section 337(c) of the Act and that it meets the statutory criteria for granting a waiver of the Commission's Rules under the statute. Specifically, we find that: (a) no spectrum other than the Part 22 frequencies at issue is immediately available to satisfy Pomona's requested public safety service use; (b) the requested use will not cause harmful interference to other spectrum users; (c) the proposed use is consistent with other public safety allocations in the area; (d) the frequencies in question were allocated for their present Part 22 use not less than two years ago; and (e) granting this application is consistent with the public interest. With particular regard for the public interest, we find that Pomona's public safety needs are critical, that it has an immediate need for additional frequencies for its public safety mobile communications system in order to address potentially dangerous situations, and that obtaining frequencies within the UHF band promotes the achievement of interoperability. Therefore, we grant Pomona's waiver request pursuant to Section 337(c) of the Act.

¹FCC File No. A034936 (filed Mar. 12, 1999).

²See Letter from Fred Sanchez, Chief of Police, City of Pomona, to Federal Communications Commission (FCC) (filed July 26, 1999) (Waiver Request), enclosing Letter from Henry L. Richter, Richter Group, to FCC (dated July 1, 1999) (Richter Letter).

³See 47 U.S.C. § 337; see also Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997), § 3004 (Balanced Budget Act).

⁴47 C.F.R. Parts 22, 90.

II. BACKGROUND

2. On March 12, 1999, Pomona filed the above-captioned application, and requested a waiver⁵ under former Section 90.151 of the Commission's Rules⁶ to allow Pomona to use for public safety purposes channels offset from UHF frequencies presently allocated under Part 22 of the Commission's Rules for use by commercial communications providers.⁷ The Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division returned Pomona's application on June 18, 1999, on the grounds that the requested frequencies were not available for use by Part 90 licensees.⁸ The Branch noted that Pomona had requested a waiver, but stated that Pomona had not presented sufficient justification for a waiver.⁹ The Branch returned the application to afford Pomona the opportunity to amend it by selecting frequencies available under Part 90 or by providing additional information to justify its waiver request.¹⁰

3. Pomona submitted a revised waiver request on July 26, 1999, providing additional information and seeking a waiver pursuant to Section 337 of the Act.¹¹ According to Pomona, it needs to establish a new UHF system for the Pomona Police Department in order to achieve interoperability with other law enforcement agencies in the Los Angeles basin.¹² Without access to a UHF system, the Pomona Police Department has found itself isolated from, and unable to communicate directly with, other local public safety agencies, including the Los Angeles County Sheriff's Department, that are operating on UHF frequencies.¹³

4. Pomona's waiver request was placed on public notice on September 30, 1999.¹⁴ The only comment we received, which was submitted by the California Public-Safety Radio Association, supports the request.¹⁵

⁵See Letter from Fred Sanchez, Chief of Police, City of Pomona, to FCC (dated Feb. 9, 1999).

⁶47 C.F.R. § 90.151 (1998) (currently 47 C.F.R. § 1.925). Because this *Order* grants the *Waiver Request* pursuant to Section 337, we will not address its arguments for a waiver pursuant to former Section 90.151.

⁷See 47 C.F.R. Part 22. Part 22 governs the use of spectrum for certain common carrier Public Mobile Radio Service licensees.

⁸Application Return Notice for the Private Land Mobile Radio Services (June 18, 1999).

⁹*Id.*

¹⁰*Id.*

¹¹See *Waiver Request* at 1.

¹²*Id.*

¹³*Id.*

¹⁴See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the City of Pomona, California, to Obtain a License for Frequency Allocated for Use by Part 22 Licensees, *Public Notice*, DA 99-2046 (WTB PSPWD rel. Sept. 30, 1999).

¹⁵See generally California Public-Safety Radio Association Comments.

III. DISCUSSION

5. Section 337 of the Act provides public safety entities with a statutory means of obtaining a waiver of the Commission's Rules to the extent necessary to permit use of unassigned frequencies for the provision of public safety services.¹⁶ Subsection (c)(1) of Section 337 provides as follows:

(c) Licensing of Unused Frequencies for Public Safety Services.--

(1) Use of unused channels for public safety services.--Upon application by an entity seeking to provide public safety services, the Commission shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services by such entity. An application shall be granted under this subsection if the Commission finds that--

(A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;

(B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;

(C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;

(D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and

(E) granting such application is consistent with the public interest.¹⁷

6. When considering requests under Section 337, we first must determine whether the applicant is "an entity seeking to provide public safety services."¹⁸ Pomona states that it seeks to use the subject Part 22 frequencies to operate a public safety communications system for dispatch and tactical operations for its police department.¹⁹ Pomona contends that this would permit it to achieve interoperability with other public safety agencies in Los Angeles County and neighboring counties.²⁰ Based upon the record herein, we agree

¹⁶See 47 U.S.C. § 337; *see also* Balanced Budget Act, § 3004.

¹⁷47 U.S.C. § 337(c)(1); *see also* Balanced Budget Act, § 3004.

¹⁸47 U.S.C. § 337(c). Section 337(f) defines the term "public safety services" as "services—
(A) the sole or principal purpose of which is to protect the safety of life, health, or property;
(B) that are provided—
(i) by State or local government entities; or
(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
(C) that are not made commercially available to the public by the provider."

47 U.S.C. § 337(f).

¹⁹*Richter Letter* at 3.

²⁰*Id.*

that the purpose of the service proposed by Pomona is to protect the safety of life, health, or property, as required by Section 337(f). As a result, we conclude that Pomona has met the threshold requirement.

7. We now turn to whether Pomona meets the statutory criteria for grant of a waiver under Section 337(c)(1) of the Act. The plain language of subsection (c) provides that a waiver request under this section is required only upon a finding that all five conditions are met regarding the spectrum specifically sought by an applicant.²¹ In a case where any one of the five conditions is not met, the subject waiver will not be granted.²² As discussed in further detail below, we find that Pomona has met the statutory criteria. Pomona's waiver request parallels the previously-granted waiver request of South Bay Regional Public Communications Authority, a communications agency providing public safety communications services to several municipalities in the Los Angeles area, and we believe that granting Pomona's waiver request is consistent with Commission's decision in that case.²³

8. *No other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.* The Commission concluded in *South Bay* that there were no Part 90 frequencies available in the Los Angeles Basin.²⁴ Pomona states that this situation still prevails and that the local frequency advisory committee for public safety certified that there currently are no UHF channels available in Southern California that could be assigned for use without causing harmful interference to and/or receiving harmful interference from existing public safety users.²⁵ Because we find that the circumstances at the time of the *South Bay* decision continue to exist, we conclude that Pomona has shown that no other public safety spectrum is immediately available in the Los Angeles area.

9. *The requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations.* The requested frequencies are immediately adjacent and offset to frequencies used by other public safety entities in the Los Angeles area. As Pomona notes, by granting Part 22 frequencies to South Bay, the Commission created the opportunity for use of offset channels by Pomona.²⁶ Pomona has coordinated the use of these frequencies and received concurrence letters from adjacent users.²⁷ Pomona also coordinated the use of these frequencies

²¹See 47 U.S.C. § 337(c)(1).

²²South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5234 ¶ 56 (1999).

²³See *South Bay* 13 FCC Rcd at 23795-99 ¶¶31-41.

²⁴*Id.* at 23796 ¶34.

²⁵*Richter Letter* at 3.

²⁶*Id.*

²⁷Pomona submitted with its application concurrence letters supporting the application from parties that would be subject to potential interference. See concurrence letters of South Bay Regional Public Communications Authority, City of Burbank, Whittier Police Department, State of California Department of General Services and City of Glendale. The concurrences are all conditioned upon Pomona's agreement to mitigate and successfully solve any interference problems the proposed system may cause.

with the local frequency coordinator.²⁸ Due to topographic shielding from the rest of the Los Angeles basin, Pomona states that it will be able to use these offset frequencies without an interference potential from existing users. We conclude, therefore, that Pomona has made a sufficient showing that the use of the frequencies in question is technically feasible and would not interfere with existing licensees.

10. *The use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made.* As the Commission noted in *South Bay*, the 470-512 MHz band has become the primary frequency band used by public safety entities in the Los Angeles area.²⁹ As one of the few police departments in the area unable to operate on UHF frequencies, Pomona needs the requested waiver in order to achieve interoperability.³⁰ Thus, Pomona's use of the frequencies at issue would be wholly consistent with the Commission's prior public safety allocations in this area.

11. *The unassigned frequencies were allocated for their present use not less than 2 years prior to the date on which the application will be granted.* The Commission allocated the frequencies in question for Part 22 point-to-multipoint control channel use on August 2, 1994, effective on January 1, 1995.³¹ Thus, the frequencies at issue were allocated for their present use more than two years ago.

12. *Granting the application is consistent with the public interest.* Pomona's proposed use of the Part 22 frequencies in question would allow interoperability between its constituent agencies and neighboring jurisdictions. Because the 470-512 MHz band currently supports most of the public safety communications in the Los Angeles area, we conclude that no other frequency band will accommodate the interoperability needs identified by Pomona. We believe that granting its request provides the simplest and most practical means to establish communications links in day-to-day operations and during emergencies.³² Thus, we find that Pomona has adequately demonstrated that the grant of its Section 337(c) request is consistent with the public interest.

²⁸*Richter Letter* at 3.

²⁹*South Bay*, 13 FCC Rcd at 23797 ¶37.

³⁰*Richter Letter* at 4.

³¹Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket No. 92-115, 9 FCC Rcd 6513, 6635 (1994).

³²The Commission noted the importance of interoperability when it stated, "[I]nability to communicate hinders cooperation and coordination between public safety agencies on a day-to-day basis as well as during emergencies. We believe that the present inability of public safety agencies to communicate with each other is one of the most critical deficiencies in today's public safety communications." Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, *Notice of Proposed Rulemaking*, WT Docket No. 96-86, 11 FCC Rcd 12460, 12469 ¶22 (1996); see also Public Safety Wireless Advisory Comm., *Final Report* 19-20, 45-48 (Sept. 1996).

IV. CONCLUSION

13. For the foregoing reasons, we conclude that Pomona's request pursuant to Section 337 of the Communications Act meets the necessary criteria for waiver of our Rules. Therefore, we grant the waiver request.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) 337(c), the Request for Waiver filed by the City of Pomona, California, on July 26, 1999, **IS GRANTED**.

15. **IT IS FURTHER ORDERED** that the associated application, FCC File No. A034936, filed March 12, 1999, shall be referred to the Public Safety and Private Wireless Division, Licensing and Technical Branch for processing consistent with this *Order*.

16. This action is taken pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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